IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

WA.No. 2243 of 2006()

{IN W.P.(C)NO.33819/2005 OF THIS COURT}
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APPELLANTS: RESPONDENTS:
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1. KERALA STATE ROAD TRANSPORT CORPORATION, TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM, REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE DISTRICT TRANSPORT OFFICER, KERALA STATE TRANSPORT CORPORATION, KOTTAYAM.

BY ADV. SRI.SAJEEVKUMAR K.GOPAL, SC, KSRTC
SHRI.JOHNSON P.JOHN, SC, KSRTC

RESPONDENT: PETITIONER:

B.MOHANAN NAIR, S/O. G.BALAKRISHNAN NAIR, WORKING AS DRIVER, K.S.R.T.C., KOTTAYAM AND RESIDING AT "DEVI NIVAS", VATTAKULAM P.O., KADAPPOOR, KOTTAYAM.

BY ADV. SRI.N.UNNIKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ALONG WITH W.A.NO.2252/06 AND CONNECTED CASES ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

W.A.No.2243, 2244, 2252, 2254,
2257, 2260, 2261 & 2279 of 2006

Dated this the 18th day of December, 2006.

JUDGMENT

Abdul Gafoor, J.

In these appeals by the Kerala State Road Transport Corporation {for short **'the Corporation'},** the question to be decided by us is "whether '**daily wage service**', that an incumbent did have as conductor/driver, shall be counted for the purpose of grant of retiral benefits on his retirement on superannuation after having been regularly appointed". The issue is no longer res integre, in the light of the Division Bench judgment reported in ***Idicula Abraham v. Kerala State Road Transport Corporation {2005(3) K.L.T. SN 67, case No.79}.*** Referring to Clause XXIII of the settlement arrived

at by the management of the Corporation and the employees of the Corporation - Ext.P16 in W.P.(C)No.26178/06 leading to W.A.No.2244/06, it has been held therein that the Corporation cannot refuse to count the daily wage service. The said settlement reads as follows:

> **"XXIII Pension:**
>
> **1. Pension will be paid as per the provisions of Kerala Service Rules followed by the Government from time to time.**
>
> **2. Service under State Government prior to joining the Corporation will qualify for pension provided the break between Government service and KSRTC shall not exceed three months.**
>
> **3. Daily wages period of Conductors, Drivers and Mechanical Staff before their regular appointment in full will count for pension provided there should be at least ten days duty in a month. If there is no duty in a month, that month will be excluded and 50% will be taken as qualifying service of the months in which the number of duty is below 10 or 50% of the total daily wage period excluding the months having no duty whichever is beneficial to the employee.**
>
> **4. Pre-appointment training period of Mechanical staff including Assistant depot Engineers will be treated as qualifying service for pension."**

2. Though it has been thus stated at the outset that Pension Rules in the KSR would be applicable, it had been amplified by Clause (3) of settlement which provides for counting of daily wage period to 'Drivers/Conductors/Mechanical staff' before their regular appointment in full with the condition that there should have been at least 10 days of duty in a month. Even if there is dearth of 10 days duty, it was further stated that the period during which there is such dearth, will be excluded and 50% will be taken as qualifying service of the months in which the number of duty is below 10 or 50% of the total daily wage period excluding the months having no duty, whichever is beneficial to the employee. Thus, there is a binding provision in the

settlement as provided for in clause XXIII (3) of the settlement to count daily wage service also for the purpose of retirement benefits.

3. Admittedly, all the petitioners in the writ petitions, except that in W.P.(C) No.33819/05 which leads to W.A.No.2243/06, were regularised in the service of the Corporation by the order of the Government, Ext.P1 marked in W.P.(C)No.26178/06 dated on 5.3.2001. As per the said Government Order, taking into account the long tenure of daily wage employees, 699 conductors and 6 painters were regularised in the service of the Corporation. After such regularisation, on their retirement, Clause XXIII of the settlement as referred to above operate to count their daily wage service for computation of retiral benefits. Necessarily,

the contention of the Corporation, that the settlement was arrived at far earlier than the regularisation and such regularisation was not in contemplation, is of no avail. Going by Section 18(3)(d) of the Industrial Disputes Act, 1947, a settlement will be binding even on the future employees, unless it is terminated in accordance with law as provided in Section 19 of the said Act. No piece of evidence has been brought to our notice regarding the termination of the settlement. Necessarily, that will be binding on the employees regularised far later. Even if there had been any difficulty or inconvenience because of this mass regularisation and consequent counting of their daily wage service prior to their regularisation, it was incumbent on the Corporation to incorporate such restrictive

covenant as a pre-condition for regularisation. That has not been done or even no steps were taken to terminate the settlement. Therefore, the Corporation cannot revert back from the settlement and contend that the writ petitioners cannot seek to count the daily wage service put in by them before regularisation for the purpose of retiral benefits in the light of the said clause in the settlement.

4. As regards the petitioner in W.P.(C) No.33819/05 leading to W.A.No.2243/06, he was a person appointed on daily wages as per Ext.P1 dated 24.2.1993 and was later regularised on advice by the Public Service Commission as per Ext.P2 dated 7.7.2000. His case is also squarely covered by Clause XXIII of the settlement. Therefore, the learned single Judge was perfectly

justified in directing the Corporation to count the provisional service put in by him for the purpose of calculating his retiral benefits. This point is also covered in favour of the respondents in terms of the decision in ***Idicula Abraham's*** case (cited supra), which had been confirmed by the Supreme Court as well, refusing leave to appeal at the instance of the appellant/ Kerala State Road Transport Corporation.

Appeals, therefore, fail and are accordingly dismissed.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

sk/

//true copy//

PS to Judge

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

W.A.No.2243, 2244, 2252, 2254,
2257, 2260, 2261 & 2279 of 2006

JUDGMENT

18th Decmber, 2006.